

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DELAWARE MARKETING : CA No. 04-263  
PARTNERS, LLC, a Delaware :  
limited liability company, :  
Plaintiff : JUDGE MCLAUGHLIN AND  
: MAGISTRATE JUDGE  
v. : SUSAN PARADISE BAXTER  
:  
CREDITRON FINANCIAL :  
SERVICES, INC., a :  
Pennsylvania corporation :  
and, TELATRON MARKETING :  
GROUP, INC., a :  
Pennsylvania corporation, :  
Defendants :

Deposition of TRISHA DESANTI-BOEHM, taken  
before and by Sonya Hoffman, Notary Public in and for  
the Commonwealth of Pennsylvania on Tuesday, November  
14, 2006, commencing at 4:36 p.m., at the offices of  
Elderkin Martin Kelly & Messina, 150 East Eighth  
Street, Erie, PA 16501.

For the Plaintiff:

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Charles Snyderman, PA  
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For the Defendants:

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Reported by Sonya Hoffman  
Ferguson & Holdnack Reporting, Inc.

1 Q. And are you aware that you've been designated as  
2 the 30(b)(6) witness with regard to the counterclaim that's  
3 been filed in the case?

4 A. Yes.

5 Q. Were you involved, in any way, in the preparation  
6 of Answers to Plaintiff's Third Set of Interrogatories and  
7 Request for Production directed to Defendants?

8 A. I was.

9 Q. In your answer to Interrogatory No. 2E, if you  
10 will take a look at that please.

11 A. (Witness complies.) Yes.

12 Q. All right. You'll see that, "The Defendants  
13 currently know of new writing that's responsive to this  
14 request." Did you search for any documents that would be  
15 responsive to that question?

16 A. I did.

17 Q. And you found none?

18 A. I found none.

19 Q. Who's Sean Bebco identified in the answer to  
20 Interrogatory No. 3B?

21 A. Sean is senior vice president of our IT  
22 department. And he assisted me in getting the dumps for the  
23 lists, the names that were provided to us from Delaware  
24 Marketing Partners.

25 Q. What are tape dumps as referred to in answer to

1 3C?

2 A. The tape dumps are when the lists would come in  
3 from Delaware Marketing Partners, the IT department would go  
4 through those and provide a breakdown of certain things; new  
5 numbers, numbers on that tape that were do not calls, the  
6 numbers that might have been bad numbers, things of that  
7 nature. And what they did was they just kind of give a  
8 breakdown of what was in that file, so to speak.

9 Q. And when you say "numbers", are you referring to  
10 telephone numbers?

11 A. Yes, I am.

12 Q. If you turn, please, to the answer to  
13 Interrogatory No. 4D. You'll see the Interrogatory, it  
14 says, "Please produce each paper writing or document which,  
15 if any, records or refers to each such representation or  
16 warrantee."

17 And that references the beginning of No. 4, which  
18 says, "With regard to the allegation in Paragraph 6 of the  
19 counterclaim that the Plaintiff represented and warranted to  
20 the Defendants that the lists which were provided to the  
21 Plaintiff prior to the signing of the contract, were  
22 indicative to the quality of the lists that the Plaintiff  
23 would continue to provide."

24 Are you with me?

25 A. Uh-huh.

1 Q. What is there in the answer to Interrogatory No. 3  
2 that is your way of producing the papers, writings, or  
3 documents that record or refer to such representations or  
4 warrantees?

5 A. Well, I think what we're referring to there is the  
6 tape dumps and the reports that we were provided that showed  
7 that the first few lists were of a substantially higher  
8 quality than the other lists, the 95 percent. I think  
9 that's what we're referring to.

10 Q. Are you guessing or --

11 A. I'm kind of guessing, yeah.

12 Q. All right. Well, what other -- did you search for  
13 any papers, writings, or documents which record or refer to  
14 the representations and warrantees?

15 A. I did.

16 Q. Did you find any?

17 A. I did not find anything that specifically referred  
18 to representations and warrantees with respect to the  
19 quality of the lists. What I found, instead, of course,  
20 were data pertaining to those lists and the quality of the  
21 lists we saw in the early weeks and months of the campaign,  
22 versus the latter.

23 Q. So taking what you just said, would it be fair to  
24 say that, as far as you know, there are no written documents  
25 that refer to or -- strike refer to. There are no written

1 documents in the possession of the Defendants that would  
2 contain the alleged representations and warranties that were  
3 made on behalf of the Plaintiff.

4 A. With respect to the lists?

5 Q. Yes.

6 A. That is correct.

7 Q. Now, to your knowledge, have the tape dumps been  
8 produced?

9 A. They have been produced.

10 Q. Can you tell me if any of the documents that I'm  
11 putting in front of you are tape dumps?

12 A. (Witness reviews documents.) These are not tape  
13 dumps. And there is -- this chart here is information that  
14 came from tape dumps, but they're not the tape dumps.

15 Q. All right. What do the tape dumps look like?

16 A. They're probably -- I mean, they're broken down by  
17 each tape that came in. They're -- each packet is maybe  
18 about four or five pages in length. On the left-hand side,  
19 there will be a segment that shows the total counts for the  
20 entire tape with respect to the total numbers that were in  
21 that tape; how many were DNCs, how many were bad states, how  
22 many -- it will talk about the zone counts, the gender  
23 counts, the state counts, the area code counts.

24 MR. SNYDERMAN: Mr. Markham, do you know whether  
25 those were produced?

1 A. I put them in the box. I know they were produced.  
2 I separated them.

3 Q. They were in paper?

4 A. They were in paper. And they totaled a stack  
5 probably this high (indicating). They were broken down by  
6 each specific tape that was sent to us.

7 Q. Does the word "tape dump" appear anywhere on  
8 there?

9 A. I don't think so.

10 Q. All right. Interrogatory No. 5 says, "Describe  
11 the particularity each of the capital investments refer to  
12 in Paragraph 9 of the counterclaim. And as to each such  
13 capital investment, state the following." And the very  
14 first one is the date the capital investment was made.

15 The answer is, "Exact dates are unknown, but the  
16 largest number of purchases would have been incurred in  
17 September and October of 2002 and June to August of 2003."

18 Now, can you explain to me why the exact dates are  
19 unknown?

20 A. I worked directly with Mark Kisiel in financial  
21 control to ascertain this information, and I was told very  
22 clearly that is not information that is available to us. We  
23 do not have an exact listing of the date of such an  
24 investment or how they're put down, but I can give you a  
25 list of what they might be and a time range.



1 And I know that we provided a chart and some  
2 documentation back in, I think, June that would also show  
3 expenses and disbursements.

4 Q. But were any of those that were produced in June  
5 described, as or designated as, capital investments?

6 A. I don't know if they were or not.

7 Q. So it's your testimony that the Defendants are  
8 unable to tell me the exact dates when any capital  
9 investment was made.

10 A. I'm telling you that I don't have that  
11 information. That's correct. And I do know that there was  
12 a -- I mean, if you're talking strictly about a capital  
13 investment in terms of, you know, appreciation, and  
14 depreciation, and things like that, I don't know. I can  
15 tell you the things we expended our resources on.

16 Q. Well, let's do this --

17 A. Okay.

18 Q. -- Paragraph 9 of the counterclaim states that,  
19 "In reliance upon the Plaintiff's representations and  
20 promises, the Defendants also made capital investments and  
21 hired and trained personnel based upon the levels of  
22 production and the levels of revenue promised by the  
23 Plaintiff."

24 What capital investments were made?

25 A. The capital investments that I'm referring to, as

1 to August of 2003?

2 A. We were committed to this program. We knew that  
3 it was a program that was not going to be magic in the first  
4 few months that we went up on it. We expected that to some  
5 extent, so we were committed to it. Even though that we  
6 were going through a difficult time, we were committed to  
7 making it work. Which is why even though we were  
8 dissatisfied, I guess, with Delaware Marketing to some  
9 extent, Mrs. Covatto still sat down with Brian in November

10 and said, look, there's still a way that we can get through  
11 this. That's why I talked to him in December and said,  
12 look --

13 Q. December of when?

14 A. 2003.

15 Q. Okay.

16 A. There's still -- you know, we still -- we're not  
17 ready to cut off the relationship, there may still be a way  
18 to make this work. We had absolutely no intent on just  
19 cutting and running on the program. We were continuously  
20 looking for ways to make the program less burdensome with  
21 respect to expenditures and financial requirements to make  
22 it more profitable for everyone.

23 Q. In answer to Interrogatory No. 5B, where the  
24 question was the dollar amount of the capital investments,  
25 the answer, instead of giving a dollar amount, is, "See



1 documents previously produced."

2 How would I be able to determine from documents  
3 previously produced what you are contending are capital  
4 investments?

5 A. As I understand it, you received a chart that  
6 outlined expenses and disbursements made from the Academic  
7 Lending Center. In looking at that chart, I think it's very  
8 clear to see where purchases were made, what month, what  
9 costs we felt were incurred as a result of those purchases.

10 Q. So any purchase was a capital investment?

11 A. That's -- in loose terms, that's the way I looked  
12 at it. Yes.

13 Q. And the answer to Interrogatory 5D, the question  
14 was, "Which of the Defendants actually paid for the capital  
15 investment?" And the answer is, "It is believed the final  
16 payment would have been made by Creditron Financial  
17 Services, Inc."

18 How would we know which of the Defendants made the  
19 actual payment, even in final payment, would have been by  
20 Creditron Financial Services?

21 A. Well, I think that's probably something that  
22 financial control could better speak to you, and probably  
23 already has spoken to, in their depositions from the last  
24 few days. I don't know. I just know in speaking with  
25 financial control they told me that, you know, although a

1 A. I was not.

2 Q. So you don't know the tone of voice that was used  
3 in those discussions.

4 A. No, I do not.

5 Q. And you don't know what specific questions were  
6 asked, right?

7 A. I don't.

8 Q. And you don't know what the answers were given,  
9 right?

10 A. I can see Alan's e-mail in response ot it.

11 Q. Other than the e-mail?

12 A. Other than the e-mail, no.

13 Q. And the e-mail contains the word in the subject,  
14 "estimate", right?

15 A. Sure. And then it goes on to say it's fairly  
16 conservative.

17 Q. And does it say that it's a representation and  
18 warrantee?

19 A. It does not.

20 Q. Can you explain why an estimate that you  
21 considered to be a representation and warrantee wasn't  
22 included in the written contract between the parties as a  
23 representation and warrantee if it was something that was so  
24 important that you and Terry Smith were relying on it in  
25 order to go forward?

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1 A. I can't. I didn't write the contract, so I can't.

2 Q. Well, you're talking about things that you weren't  
3 involved in other respects, why can't you talk about this?

4 A. I cannot give you an answer. I don't know.

5 Q. Did you ever talk with Mr. Covatto about why that  
6 representation and warrantee wasn't in the contract?

7 A. I don't believe I did, no.

8 Q. Even in the context of the litigation?

9 A. In all honesty, I haven't had many conversations  
10 with Mr. Covatto in anticipation of this litigation in the  
11 last year. So, no, I haven't.

12 Q. The answer to Interrogatory -- or the  
13 Interrogatory, itself, No. 6D says on Page No. 7, "Identify,  
14 by name, each individual you contend was hired and trained  
15 in reliance upon the Plaintiff's representations and  
16 promises. And as to each such individual, state the  
17 following: Date of hire." And the answer is, "See  
18 documents produced to wit."

19 What documents were produced that would give me  
20 that information?

21 A. I provided those on a password protected CD.

22 Q. And each of those individuals was hired and  
23 trained and worked solely in connection with telemarketing  
24 of student loan consolidations?

25 A. No, they didn't.

1 Q. They did other things?

2 A. Yeah, they did. And the reason for that is --

3 Q. I didn't ask you the reason.

4 A. That's fine.

5 Q. Are there records kept by the Defendants that show  
6 what else these individuals, who were hired and trained in  
7 reliance upon the Plaintiff's representations and promises,  
8 what other work they were doing that was not related to  
9 student loan consolidations?

10 A. I don't know if there are records, but I could  
11 attest to it today.

12 Q. You can tell me what each single person did at any  
13 given time that wasn't related to Academic Lending Center?

14 A. No, but I can give you an overview of everyone  
15 that's included on there.

16 Q. The Interrogatory asks for each individual.

17 A. And that's included.

18 Q. So give me the name of one of the individuals.

19 A. Pick someone out of there -- I mean --

20 Q. I'm asking --

21 A. I guess the easiest way to explain this is --

22 MR. MARKHAM: Answer his question. Read back his  
23 question, please.

24 (Previous question read back.)

25 A. One of the individuals on that list?

1 Q. Yes.

2 A. Mary Frick.

3 Q. Mary Frick?

4 A. Sure.

5 Q. All right. And how long was Mary -- when was Mary  
6 hired?

7 A. Actually, I need to qualify that, she wasn't  
8 hired. Melissa Hlwati, H-L-W-A-T-I.

9 Q. When was the date that she was hired?

10 A. I don't remember that off the top of my head.  
11 It's included in the documents produced.

12 Q. And what was she -- was she trained to do work  
13 specifically relating to student loan consolidations?

14 A. She was.

15 Q. And is she still employed?

16 A. She is.

17 Q. Was she ever trained to do anything unrelated to  
18 student loan consolidations?

19 A. She was.

20 Q. And when did she receive that training?

21 A. She came on, I believe, either one of our other  
22 inbound programs to backfill for someone who had been  
23 promoted to --

24 Q. The question was: When was she trained?

25 A. On her date of hire.

1 Q. So on her date of hire, she was trained to do some  
2 things relating to the Academic Lending Center, student loan  
3 consolidations, and she was trained to do some other stuff.

4 A. No. She was trained to do other stuff to begin  
5 with.

6 Q. So how can you identify her as someone who was  
7 hired and trained in reliance upon the Plaintiff's  
8 representations and promises?

9 A. Because she took the place of someone who was  
10 promoted to the ALC program. In promoting that other  
11 individual to ALC, we had to backfill and hire for those  
12 other programs. Additionally, Melissa was trained on a  
13 go-forward basis and now works in the administrative area of  
14 ALC, which she began working in November of 2002.

15 Q. Who hired -- who was the company that hired or  
16 employed Melissa?

17 A. Melissa would have hired from Telatron Marketing  
18 Group.

19 Q. And when she was hired, was she first hired to do  
20 anything relating to these student loan consolidations?

21 A. No.

22 Q. And when was she put into a position that related  
23 to student loan consolidations?

24 A. I want to say late fall, early January.

25 Q. Late fall of 2003?



1 A. 2002, or early January of 2003.

2 Q. Can you name another individual.

3 A. Let's see, Diana Ball.

4 Q. Let's go back to Melissa for a moment. Does the  
5 information that was produced on the CD show, in terms of  
6 date hired, the date that she was initially hired or the  
7 date she was put into the position in late fall of 2002 or  
8 early 2003?

9 A. Initially hired.

10 Q. Do you consider that to be somewhat misleading --

11 A. No.

12 Q. -- to -- let me finish -- to provide the Plaintiff  
13 with a date of hire for someone who was hired in reliance  
14 upon the Plaintiff's representations and warranties when, in  
15 fact, her initial hire had nothing to do with the  
16 Plaintiff's representations and warranties?

17 A. No.

18 Q. Why not?

19 A. Because it would be very misleading to not have  
20 provided the information. As we started up this program, we  
21 couldn't go out and hire 250 people off the street in two  
22 weeks to launch a program. So, therefore, what we had to do  
23 was pull from our internal workings.

24 So we had to pull some people who were currently  
25 running other programs, put them through training programs

1 to put them on the Academic Lending program. That, in fact,  
2 left holes on other programs.

3 So, although, we weren't hiring externally to fill  
4 in the ACL program, we were hiring so that we could put  
5 people onto the ACL program. So I couldn't just provide a  
6 listing of the people we hired for the ALC program because  
7 the way that we managed the ALC program internally was we  
8 used it to promote people from within. The best of the  
9 best, the cream of the crop, they got promoted to the ALC

10 program. We then hired for the more baseline telemarketing  
11 positions.

12 Q. So you responded to a question that wasn't asked.

13 A. I responded in the best way that I could to the  
14 question that was asked. I wanted to make sure I gave the  
15 most thorough response.

16 Q. Okay. If you to go through your records and  
17 provide me with the names of each individual who was hired  
18 and trained based on what you contend are Plaintiff's  
19 representations and promises, how would you go about doing  
20 that?

21 A. I'm not sure that I could do it based strictly on  
22 who was hired for the Academic Lending Center program  
23 because it's three years old. The information that I got  
24 was strictly from database, it's not a reporting that we  
25 keep in a -- I guess, the best method. It's strictly from

1 our database.

2 So I'm not sure that I could go back and do that  
3 based on the ID -- or based on the position numbers and  
4 identification.

5 Q. To make sure we understand one another, there's  
6 going to be a trial in this case and your attorney, probably  
7 with your help, is going to attempt to prove in court that  
8 you hired and trained personnel based upon the levels of  
9 production and the levels of revenue. And the documents

10 that you're going to use to prove that, are the documents  
11 that you produced on the CD, correct?

12 A. I don't know what he'll use. I assume so. I  
13 don't know.

14 Q. Well, there aren't any other documents that you're  
15 going to come up with that haven't been shown to me; are  
16 there?

17 A. There aren't, no.

18 Q. And so you're unable to provide the names of the  
19 individuals who you contend were hired and trained.

20 A. I'm unable to provide a complete listing, yeah.  
21 That's correct.

22 Q. And, in fact, some of the names that you did  
23 provide, in fact, were not hired initially and trained based  
24 upon the Plaintiff's representations and promises.

25 A. I think I answered what my understanding of that

1 was. They were. I took people from other programs to  
2 launch this program. And, therefore, those other  
3 individuals had to be used to backfill those individuals.  
4 So I answered it the best way that I could.

5 Q. Is there any explanation in connection with the  
6 information that you provided as to what you were providing  
7 as opposed to what was being asked?

8 A. No.

9 Q. So unless I took the time to depose you and ask  
10 you that question, I wouldn't know the explanation that you  
11 just gave me, correct?

12 A. Correct.

13 Q. The answer to Interrogatory D4 is blank. Can you  
14 explain why.

15 A. We didn't provide their last known address.

16 Q. Why?

17 A. Because I didn't see the -- I have no idea.

18 Q. Because you didn't think it was necessary.

19 A. I didn't want to give a full listing of our  
20 employees with their address.

21 Q. So you just decided to ignore it, right?

22 A. I wouldn't call it ignoring it, Mr. Snyderman. I  
23 provided a great deal of information to you.

24 Q. What would you call --

25 A. I didn't provide it.

1 Defendants." When you use the word "secretly", what do you  
2 mean?

3 A. Well, it wasn't something that was made public.  
4 It certainly wasn't told to us.

5 Q. Are you suggesting that there was some requirement  
6 on their part to tell you?

7 A. Well, I think if we have a noncompete with them  
8 and they're forming another business to compete with us,  
9 yeah, I think we would assume they would have talked to us  
10 about it.

11 Q. And why would that be?

12 A. Why would they have talked to us?

13 Q. Yeah. Why would you expect them to talk to you  
14 about that?

15 A. Well, we had a noncompete with them. I mean, we  
16 had an exclusive agreement with them. So if they were going  
17 to form a company to compete with us, I would think they  
18 would have let us know they were going in another direction.

19 Q. So you feel that the terms of the contract bound  
20 the parties?

21 A. Sure.

22 Q. It says, "Presumably, this had been in process for  
23 some period before the registration documents were filed."  
24 How long had it been in process?

25 A. I don't know. I know in September of 2003, we

1 received a curious call from Harry where he was asking us  
2 for our training materials and our scripts, and they were  
3 telling us that they were bringing somebody new on board.  
4 So that kind of raised a red flag for us at that point in  
5 time.

6 Q. Is that responsive to my question of how long  
7 before the registration were prepared and filed had they  
8 been doing this?

9 A. I gave you my understanding, I said September.  
10 That's where we got our information from, that's what we  
11 thought.

12 Q. And what was your understanding -- or what is your  
13 understanding of -- based on all the wires that had been  
14 received from Brazos in connection with the student loan  
15 consolidation program, if you were to add up all the  
16 28.57 percents of each of those wires and compare that with  
17 the amounts that were actually sent by your company to  
18 Delaware Marketing, what was the difference in those two  
19 numbers; do you know?

20 A. I don't know. It was significant.

21 Q. Millions?

22 A. Sure.

23 Q. All right. So your testimony is that at a time  
24 when millions of dollars had not been paid to Delaware  
25 Marketing for whatever reason, they were making a decision



1 to, perhaps, not do business with you anymore, right?

2 A. Sure.

3 Q. And you find some fault with that, right?

4 A. The secret nature of it, yeah.

5 Q. When did Delaware -- when did Creditron inform

6 Delaware Marketing that it was not going to be paid

7 28.57 percent of all the wires that were received?

8 A. I don't know. I wasn't -- I was not someone who

9 communicated that ever. I never spoke to Brian about that,

10 I never communicated it. I know from Mrs. Covatto's

11 testimony, she attested to the fact that that was not until

12 November. I don't know.

13 Q. And in the same respect that you feel that the

14 Plaintiff shouldn't keep a secret from the Defendants, do

15 you think it was okay for the Defendant not to tell the

16 Plaintiff that for all those months that they weren't going

17 to send them 28.57 percent as specified in a written

18 contract?

19 A. I think -- sure. Sure, that was a problem.

20 Q. So there were secrets on both sides, right?

21 A. Sure.

22 Q. What is there about the contract that prevents or

23 precludes the principals of Delaware Marketing from forming

24 another company and competing with the Defendants?

25 A. Well, the noncompete. And I think the purpose

1 behind that is the fact that the principals forming another  
2 company just was a way to get around the noncompete clause  
3 that was in the Delaware Marketing/Telatron agreement.

4 Q. So when you say "get around," that's another way  
5 of saying that the contract, as far as you know, didn't  
6 prevent or preclude the principals of the company from  
7 forming another company.

8 MR. MARKHAM: Objection, calls for legal  
9 conclusion.

10 Q. Well, in a nonlegal sense, do you believe that the  
11 language of the agreement, which I'm sure you've read more  
12 than once, has a provision that says that neither Delaware  
13 Marketing, or its principals, shall compete with the  
14 Defendants?

15 A. The specific language in there, no. That was my  
16 understanding.

17 Q. Right. What business, or proprietary information,  
18 list information, and analysis do you contend Plaintiff  
19 wrongfully used and/or permitted the use of?

20 A. Well, I think, first and foremost, it was curious  
21 that they were asking us for our scripts and our training  
22 manuals, so any information that we provided on that end.

23 Q. I thought you didn't provide that because it  
24 raised a red flag.

25 A. I didn't say that Terry didn't provide it, I said

1 it raised a red flag up.

2 Q. Was it provided?

3 A. I believe Terry did provide the scripts, yeah.  
4 Additionally, I mean, any of the analysis they were doing  
5 for us -- the same people who were doing the analysis for us  
6 on a product are launching a product for somebody -- you  
7 know, a competing business, it only goes to show that the  
8 information that they're gleaning from the relationship with  
9 us was probably used in the owner relationship, as well.

10 Q. Other than speculation and assumptions, do you  
11 have any direct evidence that would support the statement in  
12 the Answer to Interrogatories that there was wrongful use of  
13 Defendant's business and proprietary information?

14 A. At this time, no. I think we're still working  
15 that out.

16 Q. Is it your testimony that after the red flag was  
17 raised, based on Mr. Metcalf's request for materials, that  
18 the materials were, notwithstanding the red flag, were  
19 provided?

20 A. Yeah. Mrs. Covatto told Terry Smith to go ahead  
21 and provide them. And we had already, at one time or  
22 another, sent them the scripts for their review, so there  
23 was no issue there.

24 Q. Right. They already had the scripts.

25 A. One time at the beginning of the relationship,

1 Q. It says, "The Defendants have not yet determined  
2 the documents and/or writings which will be produced at the  
3 time of trial supportive of any allegations made in the  
4 counterclaim."

5 Now, my question is the next sentence, "However,  
6 the Defendants may offer any of the source documents which  
7 have been produced herewith, including, but not limited to,  
8 the tape dump reports and the production reports." Were  
9 production reports produced?

10 A. Yes.

11 Q. What do they look like?

12 A. They're right there.

13 Q. Okay. And what other documents would be included  
14 in source documents besides the tape dump reports and  
15 production reports?

16 A. I don't know. I didn't write that paragraph. I  
17 can't speak to it.

18 Q. Do you know if the direct mail campaigns that the  
19 Plaintiff acted on were approved by the Defendants in  
20 advance?

21 A. Yes.

22 Q. Are you familiar with the language in the written  
23 agreement that states that the Defendants will fund the  
24 direct mail campaign?

25 A. I am.

1 Q. The answer to Interrogatory 11, the question is:  
2 "Describe the particularity of the proprietary and  
3 confidential information of the Defendants which you allege  
4 in Paragraph 15 of the counterclaim that the Plaintiff  
5 disclosed and/or provided to others."

6 What specific evidence do you have that lists  
7 procured for purposes of telemarketing and/or mail  
8 campaigns, and the analysis of these lists, and the  
9 selection criteria used to secure the lists was disclosed by  
10 the Plaintiff to others?

11 A. I think we're still trying to work that out.  
12 We're curious about the date of the last list that was  
13 provided to us and information we had gleaned from other  
14 sources that other lists might have been provided elsewhere.  
15 So I think that we're still trying to find the information  
16 on that.

17 Q. Is the answer to my question, none?

18 A. None as of right now, correct.

19 Q. In the answer to Interrogatory No. 13 --

20 A. Yes.

21 Q. -- there are what appears to be two paragraphs.

22 The second paragraph of the answer states, "What records the  
23 Defendants would have if there was a sale," correct?

24 A. Correct.

25 Q. Were those records produced?

1           you're presenting to her now is misleading.

2           Q.    The question is: Do you know who the directors,  
3 officers, shareholders/owners are of Creditron Financial  
4 Services, Inc.?

5           A.    Prior to today, no.

6           Q.    And there was no one available in the Defendants'  
7 organizational structure who knew the answer to that?

8           A.    That's correct.

9           Q.    Mr. Covatto knew; didn't he?

10          A.    Yes, he did.

11          Q.    Did you call him and ask him?

12          A.    I have attempted to talk to Mr. Covatto about it.  
13 You saw --

14          Q.    Did you call him and ask him?

15          A.    I did.

16          Q.    All right. And others have been calling  
17 Mr. Covatto, right?

18          A.    Correct.

19               MR. MARKHAM: Let's take five minutes. I need to  
20 make a call.

21               (Brief recess taken.)

22 BY MR. SNYDERMAN:

23          Q.    Please take a look at the answer to Interrogatory  
24 17B. Can you tell me what documents were produced that  
25 would disclose the names of persons having knowledge of the



1 facts.

2 A. Can I see the counterclaim? I don't remember off  
3 the top of my head what 26 was about.

4 Q. "The Plaintiffs secretly conspired, planned, and  
5 assisted others to develop and operate a business  
6 that compete directly with the Defendants."

7 A. Well, the individuals would be the same  
8 individuals as B.

9 Q. My question is regarding the documents.

10 A. Okay. And the documents would be the documents  
11 that -- the documents that we have in response to C are the  
12 only documents that we have at this point.

13 Q. In response to --

14 A. I'm sorry, 8C. The documents that reflect the  
15 creation of K2 Financial, the affidavit of Karen Keller,  
16 contact between K2 Financial and ChoicePoint, and the  
17 contract between K2 Financial and its customers. Actually,  
18 the fourth one wouldn't be on there, so it would just be the  
19 documents reflected in the creation -- you know what, let me  
20 start over.

21 8A -- or 8B is the people and -- the same people  
22 that would be in 17A. And then C would be the affidavit of  
23 Karen Keller and that would be the only thing that we would  
24 have produced.

25 Q. But you didn't produce the affidavit of Karen

1 Keller.

2 A. I don't know that we didn't produce that. I don't  
3 know. Those are the documents that I know of.

4 Q. Does the affidavit of Karen Keller provide the  
5 names of any persons other than Karen Keller?

6 A. No.

7 Q. All right. So Karen Keller has knowledge of what  
8 facts that are set out in Paragraph 26 of the counterclaim?  
9 Does she know that there was a secret conspiracy?

10 A. No. She doesn't know that there was a secret  
11 conspiracy. She knows that a contract was entered into  
12 between K2 and ChoicePoint and the date. So I guess she  
13 doesn't know that there was a secret conspiracy.

14 Q. Does she know that the Plaintiffs planned and  
15 assisted others to develop and operate a business that  
16 compete directly with the Defendants?

17 A. No. The only thing she -- information she knows  
18 is that there was a contract between ChoicePoint and K2.

19 Q. So she doesn't know any of the facts that are  
20 alleged in Paragraph 26 of the counterclaim, and yet you  
21 just said that she was the one that does.

22 A. No, I misspoke. She doesn't have a clue. And  
23 that doesn't reference 26.

24 Q. So 17C, should we strike the words "and documents  
25 produced," and the entire answer is, "See answer to No. 8."

1 A. You know, I didn't write the exact language of the  
2 interrogatories. I don't know if my attorney has something  
3 more that I'm not aware of.

4 Q. Are you aware of any documents?

5 A. I'm not at this time.

6 Q. All right. And to your knowledge, you're the only  
7 30(b)(6) witness that's going to testify today, right?

8 A. Yes.

9 Q. Okay. Are you familiar with the law firm, Young,

10 Conaway --

11 A. I don't think so, no.

12 Q. Never heard of them?

13 A. I don't think so.

14 Q. Do you know for a fact that Karen E. Keller is an  
15 attorney for ChoicePoint?

16 A. I don't know. I'm not sure.

17 Q. Does the affidavit say she's employed anywhere?

18 A. I haven't look at the affidavit, honestly, since  
19 probably when it was produced, so I don't know.

20 Q. When was it produced?

21 A. Sometime this summer, maybe July or August. I  
22 don't know.

23 Q. When you say "produced," you don't mean produced  
24 to the Plaintiff, you mean prepared.

25 A. Prepared, correct.

1 analyzing the data.

2 Q. Can you give me an explanation as to why some of  
3 the information that would appear all the way to the left  
4 on, at least, the first page is not there.

5 A. It's just printed that way. I don't know. I  
6 mean, it's there. I can see -- for instance, the tape  
7 numbers are four digits, so I can see that the last three  
8 digits are there, it's the first one that's cut off. I  
9 don't know. Obviously, it was during copying or during

10 printing.

11 Q. Can you explain what the typewritten words are  
12 that appear upside down at the bottom of first page.

13 A. Processed flow for initial credit bureau, I think.  
14 Processed -- that's what it says.

15 Q. Do you know what that means?

16 A. I don't know why she would name it that way, no.

17 Q. Do you know whether the Defendants ever questioned  
18 the Plaintiff about why direct mails were not being sent on  
19 a monthly basis?

20 A. Do I know if they did? I don't know the answer to  
21 that.

22 Q. Well, is there a claim that the Defendants were  
23 somehow harmed because the Plaintiff indicated that it would  
24 make such mailings on a monthly basis and that those  
25 generate this gross income monthly?

1 A. Yes.

2 Q. How were the Defendants harmed?

3 A. Well, because the projections that were provided  
4 to us were that we were going to get this huge amount of  
5 income on a monthly basis and that would basically keep the  
6 program going. That would provide the income that would  
7 keep everything going smoothly. When we were having a lot  
8 of problems, I know, at the very beginning, when we were  
9 encountering a lot of cash-flow problems, when they came

10 back with the projections that we basically received \$1.9  
11 million from a campaign of 200,000 leads.

12 I know that Mr. Covatto had voiced that that was  
13 great, that would get us out of this problem immediately if  
14 we can see that kind of, you know, revenue on a monthly  
15 basis -- on a consistent basis.

16 Q. Does the contract, to your knowledge, obligate the  
17 Plaintiff to make monthly mailings of the new solicitations?

18 A. No. It doesn't say anything about monthly  
19 mailings.

20 Q. How was the approval of either of the direct mail  
21 campaigns communicated to the Plaintiff?

22 A. I'm not -- I know Terry provided it. Off the top  
23 of my head right now, I can't remember if she provided it by  
24 e-mail or she actually -- I think she actually picked up the  
25 phone and talked to Alan.

1 Q. The allegation in Paragraph 11 in the counterclaim  
2 says, "For the first campaign in March of 2003, the  
3 Plaintiffs sent out only 129,760 individual solicitations  
4 instead of the promised 200,000 solicitations." Didn't the  
5 Defendants approve sending out 129,760?

6 A. They approved -- we approved the direct mail  
7 campaign -- going forward with the direct mail campaign. I  
8 mean, that was the approval that was needed. I don't know  
9 that they ever came back and said, hey, we're only going to  
10 send 129,000, is that all right. I don't know the answer to  
11 that.

12 Q. Who would know the answer to that?

13 A. Terry Smith.

14 Q. Would your answer be the same with respect to the  
15 second mailing in June of 2003?

16 A. Yes.

17 Q. Paragraph 15 of the counterclaim concludes with  
18 the words, "In a further effort and plan to damage and  
19 weaken Defendant's competitive advantage, the Plaintiff,  
20 then, abruptly and without warning terminated the parties'  
21 contract on January 9, 2004."

22 A. That's correct.

23 Q. Were you involved at all in the communications  
24 from the Plaintiff to the Defendants about entering into  
25 some sort of agreement in the fall of 2003?



1 A. I wasn't at the very beginning, the first  
2 presentation of that proposal, but I did, then, pick it up  
3 in November and December; Brian and I began talking.

4 Q. And did those discussions and the documents that  
5 were presented give you any reason to suspect that if you  
6 didn't agree to what the Plaintiffs wanted that the deal  
7 would be done?

8 A. I certainly didn't get that from discussing that  
9 with Brian. In fact, I specifically said to him, you know,  
10 we want to give a good-faith effort to provide X amount of  
11 dollars on a weekly basis to see what we could work out with  
12 this relationship. So he never said there's nothing to work  
13 out, you can either accept it or not accept it, we're going  
14 to terminate the contract.

15 Q. My --

16 A. And I don't remember the exact terms of that  
17 proposal, so.

18 Q. What good-faith effort was used to send monies on  
19 a weekly basis?

20 A. We sent \$30,000 a day or two after Brian and I  
21 spoke. And then another \$30,000, I think, a week -- or two  
22 weeks later. Two weeks later.

23 Q. So in the six weeks after you told Brian that you  
24 would make a good-faith effort to send \$30,000 a week, how  
25 much money did you send?

1 A. We sent \$60,000. And I don't know that it was six  
2 weeks, but in the month of December is when Brian and I were  
3 talking. I don't know when we picked up that conversation,  
4 but we sent two payments of \$30,000 each, I believe.

5 Q. Why wasn't \$30,000 sent each week?

6 A. The second week, it was just my error that it  
7 wasn't sent. It wasn't an intentional decision not to send  
8 them \$30,000.

9 Q. How about the next week?

10 A. The next week, we sent them \$30,000.

11 Q. What about the week after that?

12 A. The week after that, we had started having  
13 significant problems with the final lists that they  
14 provided. In fact, our conversion was the lowest it had  
15 ever been, you know, of the lists they had provided to us.  
16 At that point we realized that there was a disconnect. And  
17 even though we were talking with Brian, even though we had  
18 voiced our concerns over the last set of lists we had  
19 received; these lists were performing absolutely no better.  
20 And it appeared apparent to us at that point that we're  
21 probably not going to be able to go further.

22 Q. And when it appeared that you weren't probably  
23 going to go further, does that mean that you were going to  
24 terminate the contract?

25 A. No. It meant that we were providing a response to

1 their proposal. We had -- there was never a discussion  
2 about terminating the agreement on our end. Brian had  
3 provided a settlement proposal of source, I guess, and  
4 Mr. Covatto was working on a response to that.

5 Q. And when you decided to stop sending the \$30,000 a  
6 week, did you notify the Plaintiff that you weren't going to  
7 be doing that?

8 A. I did not, no.

9 Q. Why not?

10 A. I wasn't in the office at the end of December and  
11 then we had a few days to work on it. I don't know. I just  
12 didn't pick up the phone and call him.

13 Q. Another secret?

14 A. It wasn't a secret. I just didn't --

15 Q. You just didn't tell them.

16 A. I didn't have any communication with Brian at that  
17 point. He wasn't calling me, I wasn't calling him. He was  
18 waiting for our response that I told him we would send him  
19 on the 9th or 10th.

20 Q. You knew his e-mail address.

21 A. Sure, I did, and he knew mine.

22 Q. And you did not e-mail him to tell him, by the  
23 way, I told you I was going to send \$30,000 a week, I missed  
24 one by mistake, and now we're not going to do it anymore?

25 A. No, I didn't. I didn't e-mail.

1 Q. And after you stopped sending \$30,000 a week,  
2 shortly after that is when the contract was terminated,  
3 right?

4 A. I don't know that last date we sent --

5 Q. It was January 9th.

6 A. Maybe three weeks later, two weeks later,  
7 something like that.

8 Q. Do you think there was any connection there? Did  
9 that ever occur to you?

10 A. Sure, there was.

11 MR. SNYDERMAN: I'm done.

12 MR. MARKHAM: She'll read.

13

14 (Deposition concluded at 6:10 p.m.)

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